

AMENDED IN SENATE MARCH 24, 2004

SENATE BILL

No. 1424

Introduced by Senator Burton

February 19, 2004

~~An act to add Section 15627 to, and to repeal Part 10 (commencing with Section 15700) of Division 3 of Title 2 of, the Government Code, and to add Section 20.5 to the Revenue and Taxation Code, relating to~~
An act to amend Sections 6561, 6561.5, 6563, 6565, 12428, 12430, 12431, 19045, 19046, 19047, 19048, 19050, 19301, 19324, 19331, 19332, 19333, 19334, 19335, 19343, 19344, 19345, 19346, 19347, 19350, 19381, 19382, and 19384 of, to add Part 12 (commencing with Section 25150) to Division 2 of, and to repeal Sections 6562, 6564, and 12429 of, the Revenue and Taxation Code, relating to governmental organization.

LEGISLATIVE COUNSEL'S DIGEST

SB 1424, as amended, Burton. Governmental reorganization: *California Tax Court.*

Existing law provides for the establishment of the State Board of Equalization, and prescribes its various powers and duties regarding the administration of property taxes and various excise taxes and its administrative appeals responsibilities with regard to state personal income taxes and bank and corporation taxes. Existing law also provides for the establishment of the Franchise Tax Board and prescribes its various powers and duties regarding the administration of state personal income taxes and corporation taxes.

Existing law provides for the review by the State Board of Equalization of assessments and determinations of tax under the Sales and Use Tax Law and specified provision of the insurance taxation laws,

upon a filing of a specified petition by the taxpayer. Under existing law, the Franchise Tax Board reviews its deficiency assessments of personal income taxes and corporation taxes upon the filing of a protest by the taxpayer. The Franchise Tax Board's action upon the protest is subject to appeal by the taxpayer to the State Board of Equalization, which hears and determines the appeal. Existing law provides that a taxpayer, upon payment of the underlying tax assessment, may file a claim for refund with the superior court.

This bill would create the California Tax Court that would replace the State Board of Equalization as the forum that would hear and determine appeals from taxpayers with respect to sales and use tax determinations, specified insurance tax determinations, personal income tax deficiency assessments, and corporation tax deficiency assessments. This bill would prescribe the qualifications for, the term of office of, and the manner in which a judge is appointed to the California Tax Court. This bill would prescribe the procedures to be followed by the California Tax Court with respect to these appeals and would provide that a taxpayer's option to file an appeal with the California Tax Court would be in lieu of filing an appeal in the California Superior Court. This bill would further provide that, within 6 months of the date a determination by the California Tax Court becomes final, a taxpayer or the applicable state agency may appeal the determination of the California Tax Court to the Court of Appeal.

~~Existing law provides for the establishment of the Franchise Tax Board and prescribes its various powers and duties regarding the administration of state personal income taxes and corporation franchise and income taxes.~~

~~This bill would abolish the Franchise Tax Board, and would provide for the transfer of its powers and duties to the State Board of Equalization, operative January 1, 2006. The bill would require the State Board of Equalization to submit a report to the Governor and the Legislature, on or before June 30, 2005, regarding the board's assumption of the duties of the Franchise Tax Board.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 15627 is added to the Government~~
2

1 *SECTION 1. (a) The Legislature finds and declares all of the*
2 *following:*

3 *(1) In order to increase public confidence in the fairness of the*
4 *California's tax system, the state should provide an independent*
5 *entity to resolve disputes between state taxing agencies and*
6 *taxpayers.*

7 *(2) By establishing an independent tax court, the Legislature*
8 *would provide California's taxpayers with a means of resolving*
9 *controversies that ensures the basic elements of due process and*
10 *fairness are met.*

11 *(b) It is the intent of the Legislature to create a tax court that*
12 *will ensure fair and equal treatment for similarly situated*
13 *taxpayers, and to provide a legal forum for resolution of tax*
14 *disputes that are consistent with federal tax resolution procedures.*

15 *SEC. 2. Section 6561 of the Revenue and Taxation Code is*
16 *amended to read:*

17 6561. Any person against whom a determination is made
18 under Article 2 (commencing with Section 6481) or 3
19 (commencing with Section 6511) or any person directly interested
20 may petition for a redetermination *with the California Tax Court*
21 within ~~30~~ 90 days after service upon the person of notice thereof.
22 If a petition for redetermination is not filed within the ~~30-day~~
23 90-day period, the determination becomes final at the expiration
24 of that period.

25 *SEC. 3. Section 6561.5 of the Revenue and Taxation Code is*
26 *amended to read:*

27 6561.5. Every petition for redetermination shall be in writing
28 and shall state the specific grounds upon which the petition is
29 founded. ~~The petition may be amended to state additional grounds~~
30 ~~at any time prior to the date on which the board issues its order or~~
31 ~~decision upon the petition for redetermination.~~

32 *SEC. 4. Section 6562 of the Revenue and Taxation Code is*
33 *repealed.*

34 ~~6562. If a petition for redetermination is filed within the~~
35 ~~30-day period, the board shall reconsider the determination and,~~
36 ~~if the person has so requested in his petition, shall grant the person~~
37 ~~an oral hearing and shall give him 10 days' notice of the time and~~
38 ~~place of the hearing. The board may continue the hearing from~~
39 ~~time to time as may be necessary.~~

1 *SEC. 5. Section 6563 of the Revenue and Taxation Code is*
2 *amended to read:*

3 6563. ~~(a) The board California Tax Court may decrease or~~
4 increase the amount of the determination before it becomes final,
5 but the amount may be increased only if a claim for the increase
6 is asserted by the board at or before the hearing. ~~Unless the penalty~~
7 ~~imposed by Section 6485 or Section 6514 applies to the amount of~~
8 ~~the determination as originally made or as increased, the claim for~~
9 ~~increase must be asserted during one of the following applicable~~
10 ~~periods:~~

11 ~~(1) In the case of any taxpayer whose reported gross receipts~~
12 ~~and total sales price of property sold or purchased by him or her~~
13 ~~is less than ten million dollars (\$10,000,000) in each calendar~~
14 ~~quarter of the period or periods to which the determination applies,~~
15 ~~within three years after the first deficiency determination or within~~
16 ~~three years after the time tax records requested by the board were~~
17 ~~made available, whichever is later.~~

18 ~~(2) In the case of any other taxpayer, within eight years after the~~
19 ~~first deficiency determination or within eight years after the time~~
20 ~~tax records requested by the board were made available,~~
21 ~~whichever is later.~~

22 ~~(b) If the taxpayer and the board mutually agree, the time limits~~
23 ~~specified in subdivision (a) may be waived.~~

24 ~~(c) The board shall specify the information on which it bases~~
25 ~~its increase.~~

26 *SEC. 6. Section 6564 of the Revenue and Taxation Code is*
27 *repealed.*

28 ~~6564. The order or decision of the board upon a petition for~~
29 ~~redetermination becomes final 30 days after service upon the~~
30 ~~petitioner of notice thereof.~~

31 *SEC. 7. Section 6565 of the Revenue and Taxation Code is*
32 *amended to read:*

33 6565. (a) All determinations made by the board under
34 ~~Articles 2 or 3 of this chapter~~ Article 2 (commencing with Section
35 6481) or Article 3 (commencing with Section 6511) are due and
36 payable at the time they become final. ~~If they are~~

37 (b) All determinations made pursuant to a decision issued by
38 the California Tax Court are due and payable at the time they
39 become final.

1 (c) If any determination is not paid when due and payable, a
2 penalty of 10 per cent of the amount of the determination,
3 exclusive of interest and penalties, shall be added thereto.

4 SEC. 8. Section 12428 of the Revenue and Taxation Code is
5 amended to read:

6 12428. (a) An insurer or surplus line broker against whom a
7 deficiency assessment is made under Section 12424 or 12425 may
8 petition for redetermination of the deficiency assessment within
9 30 90 days after service upon the insurer or surplus line broker of
10 the notice thereof, by ~~filing with the board~~ a written petition with
11 the California Tax Court, with a copy to the commissioner, setting
12 forth the grounds of objection to the deficiency assessment and the
13 correction sought. ~~At the time the petition is filed with the board~~
14 ~~a copy of the petition shall be filed with the commissioner.~~

15 If

16 (b) If a petition for redetermination is not filed within the
17 90-day period prescribed by this section, the deficiency
18 assessment becomes final and due and payable at the expiration of
19 that 90-day period.

20 SEC. 9. Section 12429 of the Revenue and Taxation Code is
21 repealed.

22 ~~12429. If a petition for redetermination of a deficiency~~
23 ~~assessment is filed within the time allowed under Section 12428,~~
24 ~~the board shall reconsider the deficiency assessment and, if the~~
25 ~~insurer or surplus line broker has so requested in the petition, shall~~
26 ~~grant an oral hearing for the presentation of evidence and argument~~
27 ~~before the board or its authorized representative. The board shall~~
28 ~~give the petitioner and the commissioner at least 20 days' notice~~
29 ~~of the time and place of hearing. The hearing may be continued~~
30 ~~from time to time as may be necessary.~~

31 SEC. 10. Section 12430 of the Revenue and Taxation Code is
32 amended to read:

33 12430. The ~~board~~ California Tax Court, in the exercise of its
34 discretion, may decrease or increase the amount of the deficiency
35 assessment before the ~~deficiency assessment~~ decision issued by the
36 California Tax Court becomes final, but the amount may be
37 increased only if a claim for the increase is asserted by the
38 commissioner or the board at or before the hearing.

39 SEC. 11. Section 12431 of the Revenue and Taxation Code is
40 amended to read:

1 12431. (a) ~~The order or decision of the board~~ *California Tax*
2 *Court* upon a petition for redetermination of a deficiency
3 assessment becomes final ~~30~~ 90 days after service on the insurer
4 or surplus line broker ~~of a notice thereof, and any resulting~~
5 ~~deficiency assessment is, as applicable, and the commissioner of~~
6 ~~the notice of the decision of the California Tax Court.~~

7 (b) All determinations made by the *California Tax Court* are
8 due and payable at the time the ~~order or~~ decision becomes final.

9 SEC. 12. Section 19045 of the Revenue and Taxation Code is
10 amended to read:

11 19045. ~~(a)~~ The Franchise Tax Board's action upon the
12 protest, whether in whole or in part, is final upon the expiration of
13 ~~30~~ 90 days from the date when it mails notice of its action to the
14 taxpayer, unless within that ~~30-day~~ 90-day period the taxpayer
15 appeals in writing from the action of the Franchise Tax Board to
16 ~~the board~~ *California Tax Court*.

17 ~~(b) (1) The Franchise Tax Board's notice of action upon~~
18 ~~protest shall include the date determined by the Franchise Tax~~
19 ~~Board as the last day on which the taxpayer may file an appeal with~~
20 ~~the board.~~

21 ~~(2) Any appeal to the board filed by the taxpayer on or before~~
22 ~~the date for filing an appeal specified in the notice (pursuant to~~
23 ~~paragraph (1)) shall be treated as timely filed.~~

24 ~~(c) This section shall apply to any notice mailed after~~
25 ~~December 31, 1999.~~

26 SEC. 13. Section 19046 of the Revenue and Taxation Code is
27 amended to read:

28 19046. Two copies of the appeal and two copies of any
29 supporting documents shall be addressed and mailed to the ~~State~~
30 ~~Board of Equalization at Sacramento, California~~ *California Tax*
31 *Court*. Upon receipt of the appeal, the ~~board~~ *California Tax Court*
32 shall provide one copy of the appeal and one copy of any
33 supporting documents to the Franchise Tax Board at Sacramento,
34 California.

35 SEC. 14. Section 19047 of the Revenue and Taxation Code is
36 amended to read:

37 19047. The ~~board~~ *California Tax Court* shall hear and
38 determine the appeal and thereafter shall ~~forthwith notify~~ *issue its*
39 *decision to* the taxpayer and the Franchise Tax Board of its
40 determination and the reasons therefor.

SEC. 15. Section 19048 of the Revenue and Taxation Code is amended to read:

19048. ~~The board's determination~~ decision of the California Tax Court becomes final upon the expiration of ~~30~~ 90 days from the time of the determination ~~unless within the 30-day period the taxpayer or the Franchise Tax Board files a petition for rehearing with the board. In that event the determination becomes final upon the expiration of 30 days from the time the board issues its opinion on the petition.~~

SEC. 16. Section 19050 of the Revenue and Taxation Code is amended to read:

19050. A certificate by the Franchise Tax Board ~~or of the board, as the case may be,~~ of the mailing of the notices specified in this article, ~~or a copy of the decision issued by the California Tax Court, as applicable,~~ is prima facie evidence of the assessment of the deficiency and of the giving of the notices.

SEC. 17. Section 19301 of the Revenue and Taxation Code is amended to read:

19301. (a) If the Franchise Tax Board ~~or the board~~ California Tax Court, as the case may be, finds that there has been an overpayment of any liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount then due from the taxpayer and the balance shall be refunded to the taxpayer.

(b) In the case of a joint return filed under Section 18521, the amount of the overpayment may be credited against the amount then due from both taxpayers and the balance shall be refunded to both taxpayers in the names under which the return was paid.

(c) In the case of a corporation, the balance shall be refunded to the taxpayer or its successor through reorganization, merger, or consolidation, or to its shareholders upon dissolution.

SEC. 18. Section 19324 of the Revenue and Taxation Code is amended to read:

19324. (a) Except as provided in subdivision (b), at the expiration of 90 days from the mailing of the notice, the Franchise Tax Board's action upon the claim is final unless within the 90-day period the taxpayer appeals in writing from the action of the Franchise Tax Board to the ~~board~~ California Tax Court.

(b) If within the period set forth in Section 19384 for filing a suit for refund the Franchise Tax Board receives information ~~which~~ *that* it determines clearly establishes that a disallowed claim should have been allowed, in whole or in part, the Franchise Tax Board shall credit the amount of the overpayment against any taxes due from the taxpayer under this part and the balance shall be refunded to the taxpayer.

SEC. 19. Section 19331 of the Revenue and Taxation Code is amended to read:

19331. If the Franchise Tax Board fails to mail notice of action on any refund claim within six months after the claim is filed, the taxpayer may prior to mailing of notice of action on the refund claim consider the claim disallowed and appeal to the ~~board~~ *California Tax Court*. For substitution of the 120-day period for the six-month period contained in this section in a Title 11 case, see Section 505(a)(2) of Title 11 of the United States Code.

SEC. 20. Section 19332 of the Revenue and Taxation Code is amended to read:

19332. Two copies of the appeal and two copies of any supporting documents shall be addressed and mailed to the ~~State Board of Equalization at Sacramento,~~ *California Tax Court*. Upon receipt of the appeal, the ~~board~~ *California Tax Court* shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board at Sacramento, California.

SEC. 21. Section 19333 of the Revenue and Taxation Code is amended to read:

19333. The ~~board~~ *California Tax Court* shall hear and determine the appeal and thereafter shall ~~forthwith~~ *notify* ~~issue its decision to~~ the taxpayer and the Franchise Tax Board of its determination and the reasons therefor.

SEC. 22. Section 19334 of the Revenue and Taxation Code is amended to read:

19334. The determination of the ~~board~~ *California Tax Court* is final upon the expiration of ~~30~~ 90 days from the date of the determination unless within the ~~30-day~~ 90-day period, the taxpayer or Franchise Tax Board files a petition for rehearing with the ~~board~~ *California Tax Court*. In that event the determination becomes final upon the expiration of ~~30~~ 90 days from the date the ~~board~~ *California Tax Court* issues its opinion on the petition.

SEC. 23. *Section 19335 of the Revenue and Taxation Code is amended to read:*

19335. If, with or after the filing of a protest or an appeal to the State Board of Equalization pursuant to Article 3 (commencing with Section 19031) of Chapter 4 with the California Tax Court, a taxpayer pays the tax protested before the Franchise Tax Board acts upon the protest, or the ~~board~~ California Tax Court upon the appeal, the Franchise Tax Board or ~~board~~ California Tax Court, as applicable, shall treat the protest or the appeal as a claim for refund or an appeal from the denial of a claim for refund filed under this article.

SEC. 24. *Section 19343 of the Revenue and Taxation Code is amended to read:*

19343. At the expiration of 90 days from the mailing of the notice specified in Section 19342, the Franchise Tax Board's action upon the disallowance of the interest shall be final unless within the 90-day period, the taxpayer appeals in writing from the action of the Franchise Tax Board to the ~~board~~ California Tax Court.

SEC. 25. *Section 19344 of the Revenue and Taxation Code is amended to read:*

19344. Two copies of the appeal and two copies of any supporting documents shall be addressed and mailed to the ~~State Board of Equalization at Sacramento,~~ California Tax Court. Upon receipt of the appeal, the ~~board~~ California Tax Court shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board at Sacramento, California.

SEC. 26. *Section 19345 of the Revenue and Taxation Code is amended to read:*

19345. The ~~board~~ California Tax Court shall hear and determine the ~~same~~ appeal and thereafter shall ~~forthwith~~ notify ~~issue its decision to~~ the taxpayer and the Franchise Tax Board of its determination and the reasons therefor.

SEC. 27. *Section 19346 of the Revenue and Taxation Code is amended to read:*

19346. The determination is final upon the expiration of ~~30~~ 90 days from the date of the determination unless within the ~~30-day~~ 90-day period, the taxpayer or Franchise Tax Board files a petition ~~for rehearing~~ with the ~~board~~ California Tax Court. In that event the determination becomes final upon the expiration of ~~30~~ 90 days

1 from the date the ~~board~~ California Tax Court issues its ~~opinion~~
2 ~~upon decision with respect to~~ the petition.

3 SEC. 28. Section 19347 of the Revenue and Taxation Code is
4 amended to read:

5 19347. Within 90 days after the mailing of the notice of the
6 Franchise Tax Board's action disallowing interest upon any refund
7 claim, ~~or, in the case of an appeal to the board from the~~
8 ~~disallowance of interest on any refund claim, within the 90 days~~
9 ~~after the board's determination (including the issuance of a~~
10 ~~decision, opinion, or dismissal) of the appeal becomes final~~
11 ~~pursuant to Section 19346, the taxpayer, in lieu of filing an appeal~~
12 ~~with the California Tax Court as authorized pursuant to Section~~
13 ~~19343, may bring an action against the Franchise Tax Board on the~~
14 ~~grounds set forth for interest in the claim for the recovery of the~~
15 ~~interest.~~

16 SEC. 29. Section 19350 of the Revenue and Taxation Code is
17 amended to read:

18 19350. If a credit or refund of any part of an overpayment
19 would be barred under Section 19306, except for Section 19312,
20 no interest shall be allowed or paid with respect to that part of the
21 overpayment for any period beginning after the expiration of the
22 period of limitation provided in Section 19306 for filing claim for
23 credit or refund of that part of the overpayment and ending at the
24 expiration of six months after the date on which the claim was filed
25 or, in case no claim was filed and the overpayment was found by
26 the ~~board~~ California Tax Court, ending at the time the appeal was
27 filed with the ~~board~~ California Tax Court.

28 SEC. 30. Section 19381 of the Revenue and Taxation Code is
29 amended to read:

30 19381. ~~No~~ (a) Except as provided in subdivision (b), no
31 injunction or writ of mandate or other legal or equitable process
32 shall issue in any suit, action, or proceeding in any court against
33 this state or against any officer of this state to prevent or enjoin the
34 assessment or collection of any tax under this part; ~~provided,~~
35 ~~however, that any individual after protesting a notice or notices of~~
36 ~~deficiency assessment issued because of his or her alleged~~
37 ~~residence in this state and after appealing from the action of the~~
38 ~~Franchise Tax Board to the State Board of Equalization, may~~
39 ~~within 60 days after the action of the State Board of Equalization~~
40 ~~becomes final commence an action, on the grounds set forth in his~~

1 ~~or her protest, in the Superior Court of the County of Sacramento,~~
2 ~~in the County of Los Angeles or in the City and County of San~~
3 ~~Francisco against the Franchise Tax Board to determine the fact of~~
4 ~~his or her residence in this state during the year or years set forth~~
5 ~~in the notice or notices of deficiency assessment. No~~

6 (b) *No tax based solely upon the alleged residence in this state*
7 *of such an individual shall be collected from that individual until*
8 *60 90 days after the action of the State Board of Equalization*
9 *California Tax Court becomes final and, if he or she commences*
10 *an action pursuant to this section files an appeal with the Court of*
11 *Appeal, during the pendency of the action, other than by way of*
12 *or under the jeopardy assessment provisions of this part.*

13 *SEC. 31. Section 19382 of the Revenue and Taxation Code is*
14 *amended to read:*

15 19382. (a) Except as provided in Section 19385, after
16 payment of the tax and denial by the Franchise Tax Board of a
17 claim for refund, any taxpayer claiming that the tax computed and
18 assessed is void in whole or in part may bring an action, upon the
19 grounds set forth in that claim for refund, against the Franchise Tax
20 Board for the recovery of the whole or any part of the amount paid.

21 (b) *This section does not apply to a claim for refund that is*
22 *based upon an appeal of a determination or action by the*
23 *Franchise Tax Board that was appealed to, and adjudicated by, the*
24 *California Tax Court.*

25 *SEC. 32. Section 19384 of the Revenue and Taxation Code is*
26 *amended to read:*

27 19384. The action provided by Section 19382 shall be filed
28 within four years from the last date prescribed for filing the return
29 or within one year from the date the tax was paid, or within 90 days
30 after ~~(a) notice of action by the Franchise Tax Board upon any~~
31 ~~claim for refund, or (b) the determination (including the issuance~~
32 ~~of a decision, opinion, or dismissal) by the State Board of~~
33 ~~Equalization on an appeal from the action of the Franchise Tax~~
34 ~~Board on a claim for refund becomes final pursuant to Section~~
35 ~~19334, whichever period expires the later.~~

36 *SEC. 33. Part 12 (commencing with Section 25150) is added*
37 *to Division 2 of the Revenue and Taxation Code, to read:*
38

PART 12. CALIFORNIA TAX COURT

CHAPTER 1. GENERAL PROVISIONS

25150. *This act hereby creates the California Tax Court that is separate from and independent of the Franchise Tax Board and the State Board of Equalization.*

25151. *The California Tax Court is vested with the powers and duties, as prescribed by this act, that are necessary to conduct de novo administrative review of specified administrative determinations made by the Franchise Tax Board and the State Board of Equalization.*

25152. (a) *The California Tax Court shall be composed of five judges appointed by the Governor, subject to the confirmation of the Senate.*

(b) *The terms of the judges shall be 12 years, except that the members initially appointed to the California Tax Court shall serve terms of 4, 6, 8, 10, and 12 years, respectively, as appointed by the Governor.*

(c) *Each judge shall be selected on the basis of his or her qualifications, knowledge, and experience with regard to the administration and application of the tax laws of this state and of the United States.*

(d) *Once appointed and confirmed, each judge shall continue in office until his or her term expires and until a successor has been appointed and confirmed.*

(e) *Each judge shall be bound to the code of judicial ethics that apply to judges serving in the California courts.*

(f) *Vacancies in the California Tax Court that occur, other than by the expiration of a term, shall be filled for the unexpired term by the Governor, subject to the confirmation of the Senate.*

(g) *The Governor may remove a judge after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or for other good cause.*

25153. (a) *A candidate for a judge of the California Tax Court shall meet all of the following requirements:*

(1) *The candidate shall be a citizen of the United States.*

(2) *The candidate shall be a resident of the State of California.*

(3) *The candidate shall be licensed as an attorney, and for at least five of the 10 years preceding his or her appointment, shall*

1 *have engaged in the active practice of law, governmental or*
2 *private, with a primary focus on taxation.*

3 *(b) Before entering upon the duties of office, each judge shall*
4 *take and subscribe to an oath or affirmation that he or she will*
5 *faithfully discharge the duties of the office, and that oath shall be*
6 *filed in the office of the Secretary of State.*

7 *(c) Each judge shall devote his or her full time during business*
8 *hours to the duties of his or her office.*

9 *(d) No person, while serving as a judge with the California Tax*
10 *Court, shall engage in the practice of law or other gainful*
11 *employment or business, nor hold another office or position of*
12 *profit under this state, any other state, or the United States.*

13 *25154. Once every two years the judges shall elect a Chief*
14 *Judge, with the approval of a majority of the judges, who shall*
15 *serve as the executive director of the California Tax Court and*
16 *shall have sole charge of the administration of the California Tax*
17 *Court.*

18 *25155. Each judge shall receive compensation on the same*
19 *terms and at the same rate as judges serving in the superior courts*
20 *of this state.*

21 *25156. (a) The principal office of the California Tax Court*
22 *Tax shall be located in Sacramento, California.*

23 *(b) The California Tax Court shall conduct hearings at its*
24 *principal office. The California Tax Court may also hold hearings*
25 *at any place within the state, as assigned by the Chief Judge, with*
26 *a view to securing to taxpayers a reasonable opportunity to appear*
27 *before the California Tax Court with as little inconvenience and*
28 *expense as practicable.*

29 *(c) The state shall provide courtrooms, chambers, and offices*
30 *for the California Tax Court in Sacramento and shall arrange for*
31 *courtrooms, chambers, and offices or other appropriate facilities*
32 *when hearings are held elsewhere.*

33 *25157. The California Tax Court is authorized to promulgate*
34 *and adopt all reasonable rules and forms as may be necessary to*
35 *carry out the intent and purpose of this act.*

36 *25158. The California Tax Court is authorized to establish a*
37 *streamlined hearing process for tax deficiencies and claimed*
38 *refunds that are not in excess of ten thousand dollars (\$10,000),*
39 *exclusive of penalties and interest.*

40

CHAPTER 2. HEARINGS

25165. (a) *Proceedings before the California Tax Court shall be a full evidentiary hearing and may not be restricted to the record of the proceedings before the Franchise Tax Board, State Board of Equalization, or the Insurance Commissioner, as applicable.*

(b) (1) *Except as provided in paragraph (2), all hearings shall be open to the public and shall be conducted in accordance with the rules of practice and procedure as the California Tax Court may promulgate by regulation.*

(2) *Notwithstanding the foregoing, on motion of either party, the California Tax Court shall exclude information from the public if the party opposing disclosure of that information shows good cause as to why that information should remain confidential.*

25166. (a) *The California Tax Court is not bound by the rules of evidence as applied in civil cases in the courts of this state.*

(b) *The California Tax Court shall admit relevant evidence if it is probative of a material fact in controversy.*

(c) (1) *Subject to the provisions of paragraph (2), hearsay evidence shall be admissible if it is the kind of evidence on which reasonable persons customarily rely in the course of serious affairs.*

(2) *The rules of privilege that are recognized and applied by the laws of this state shall apply.*

(d) *Oral evidence may be taken only on oath or affirmation.*

(e) *In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, except that the Franchise Tax Board, State Board of Equalization, or the Insurance Commissioner, as applicable, shall have the burden of persuasion in the case of an assertion of fraud and in other cases provided by law.*

25167. (a) *The taxpayer may be represented by any of the following in a proceeding before the California Tax Court:*

(1) *The taxpayer or the taxpayer's spouse.*

(2) *An attorney admitted to practice before the California Tax Court.*

(3) *A participant in a law school tax clinic that is accredited by the California Tax Court.*

(4) *Any other person authorized under the rules of practice and procedure as promulgated by the California Tax Court.*

(b) *The Franchise Tax Board, State Board of Equalization, or Department of Insurance, as applicable, may be represented by any of the following in a proceeding before the California Tax Court:*

- (1) The agency's chief counsel.*
- (2) A member of the agency's legal staff.*
- (3) The Department of Justice.*

25170. (a) *The California Tax Court shall issue its decision after a hearing, within six months after the submission of briefs subsequent to completion of the hearing or, if briefs are not submitted, then within six months after completion of the hearing. The California Tax Court may extend the six-month period, for good cause shown, up to three additional months.*

25171. (a) *The California Tax Court shall issue its decision in writing, including a concise statement of the facts found and the conclusions of law reached. The California Tax Court's order shall, subject to law, grant that relief, invoke those remedies, and issue those orders as it deems appropriate to carry out its decision.*

(b) *If a decision is certified for publication in accordance with subdivision (b) of Section 25172, the California Tax Court's interpretation of a taxing statute subject to contest in one proceeding shall be followed by the California Tax Court in all future proceedings, and its application of a taxing statute to particular facts shall be followed by the California Tax Court in all future proceedings involving similar facts, unless the California Tax Court's interpretation or application conflicts with that of an appellate court.*

(c) *The California Tax Court's decision shall have the same effect, and shall be enforced in the same manner, as a judgment of a superior court of this state.*

25172. (a) *Except as provided in subdivision (b), the final decision of the California Tax Court is not certified for publication.*

(b) *The Chief Judge, subject to approval of the majority of the judges of the California Tax Court, may designate a final decision as a certified decision for publication.*

(c) *The California Tax Court shall provide for the publication of its certified final decisions in the form it deems best adapted for public convenience. These publications shall be made permanently available and constitute the certified decisions of the California Tax Court.*

1 (d) (1) All final decisions should be made available for public
2 review.

3 (2) All evidence and transcription of the hearings conducted by
4 the California Tax Court shall be available for public review with
5 the exception of the following:

6 (A) Any evidence or transcription that applies to trade secrets
7 or other confidential information.

8 (B) Any evidence or transcription that the California Tax
9 Court, upon motion of a party to the proceeding, has withdrawn
10 from public record.

11 25173. (a) Except as provided in subdivision (b), the decision
12 of a California Tax Court judge that conducted the hearing is not
13 subject to approval by the remaining members of the California
14 Tax Court.

15 (b) The Chief Judge of the California Tax Court, in his or her
16 sole discretion, or in the alternative, a majority of the California
17 Tax Court judges, may determine that the decision of one of the
18 California Tax Court judges should be decided by the entire
19 California Tax Court.

20 25180. (a) A taxpayer or the Franchise Tax Board, the State
21 Board of Equalization, or the Insurance Commissioner, as
22 applicable, may file an appeal with the California Tax Court for
23 a reconsideration of its decision within the 90-day period
24 following the California Tax Court's issuance of its decision.

25 (b) (1) Except as provided in paragraph (2), the California Tax
26 Court may set a time, date, and place for hearing the appeal and
27 shall notify the taxpayer, the Franchise Tax Board, the State Board
28 of Equalization, or the Insurance Commissioner, as applicable,
29 not less than 60 days in advance of the date of the hearing.

30 (2) The California Tax Court, in its discretion, may take any
31 other action as it may deem appropriate in lieu of hearing an
32 appeal, including, but not limited to, summary reversal,
33 depublication of a decision certified for publication, or a summary
34 affirmance of the decision.

35 (c) If a hearing on an appeal is scheduled, the California Tax
36 Court shall hear and issue a decision on the appeal and shall
37 thereafter notify the taxpayer and the Franchise Tax Board, the
38 State Board of Equalization, or the Insurance Commissioner, as
39 applicable, of its determination and the reasons therefor.

(d) If the California Tax Court does not grant an appeal of its decision, it shall notify the taxpayer and the Franchise Tax Board, the State Board of Equalization, or the Insurance Commissioner, as applicable, of its determination and the reasons therefor.

25182. (a) The decision of the California Tax Court, or in the case of an appeal of a decision of the California Tax Court, the action on the appeal, becomes final 90 days following the issuance to the taxpayer and the Franchise Tax Board, the State Board of Equalization, or the Insurance Commissioner, as applicable, of the decision unless either the taxpayer or the Franchise Tax Board, the State Board of Equalization, or the Insurance Commissioner, as applicable files a notice of appeal within the 90-day period with the Court of Appeal for the appellate judicial district in which the appeal has arisen.

(b) The standard of judicial review to be applied by any reviewing court shall be the substantial evidence test, defined and applied as follows:

(1) If the determination by the California Tax Court is not fairly supported by the evidence in the record considered as a whole, the reviewing court may apply its independent judgment in reviewing the findings of fact.

(2) The court shall also use its independent judgment in reviewing questions of law and mixed questions of law and fact.

25183. The final action of the California Tax Court shall be considered *res judicata* with respect to any original action on a claim for refund filed in a superior court in this state.

~~Code, to read:~~

~~15627. (a) The board is the successor to, and is vested with, all of the duties, powers, purposes, responsibilities, and jurisdiction of the Franchise Tax Board. However, the statutes and laws under which the Franchise Tax Board existed and all laws prescribing the duties, powers, purposes, responsibilities, and jurisdiction of the Franchise Tax Board, together with all lawful rules and regulations established thereunder, are expressly continued in force.~~

~~(b) "Franchise Tax Board" when used in any statute, law, rule, or regulation now in force, or that may hereafter be enacted or adopted, means the board.~~

~~(c) Any action to which the Franchise Tax Board is a party on and before the January 1, 2006, will not be abated by operation of~~

~~law and shall continue in the name of the State Board of Equalization, which shall be substituted for the Franchise Tax Board by the court in which the action is pending. The substitution of parties will not affect the rights of the parties to the action.~~

~~SEC. 2. Part 10 (commencing with Section 15700) of Division 3 of Title 2 of the Government Code is repealed.~~

~~SEC. 3. Section 20.5 is added to the Revenue and Taxation Code, to read:~~

~~20.5. Any reference hereafter in this code to the “Franchise Tax Board” shall be deemed a reference to the board.~~

~~SEC. 4. Sections 1 to 3, inclusive, and Sections 6 and 8 of this act shall become operative on January 1, 2006.~~

~~SEC. 5. (a) It is the intent of the Legislature in enacting this act to provide a governmental organization that will ensure centralized, effective, efficient, and impartial revenue collection, administration, and enforcement for the State of California.~~

~~(b) In order to effectuate this purpose, it is the intent of the Legislature to consolidate the powers and duties of the Franchise Tax Board into the State Board of Equalization, and thereby streamline the functions previously performed by both of those agencies.~~

~~(c) It is the intent of the Legislature that this consolidation shall be carried out in the least disruptive manner so as to ensure that tax collections are not adversely affected.~~

~~(d) It is the intent of the Legislature that the consolidation shall progress as expeditiously as is feasible and economical.~~

~~SEC. 6. The Executive Officer of the State Board of Equalization, with the approval of the members of the board, shall organize its new responsibilities, formerly those of the Franchise Tax Board, in any manner as he or she deems necessary for the proper conduct of the board’s consolidated revenue collection, administration, and enforcement functions.~~

~~SEC. 7. On or before June 30, 2005, the State Board of Equalization shall submit a report to the Governor and the Legislature on the plan for, and the progress of, the board’s assumption of the duties of the Franchise Tax Board. The report shall include recommendations for legislation that would be necessary to more effectively achieve the efficiencies and purposes intended by this act and shall include, but not be limited to, the following:~~

1 ~~(a) A strategic plan to facilitate the orderly assumption by the~~
2 ~~board of all duties and responsibilities of the Franchise Tax Board,~~
3 ~~including the identification of critical issues, including, but not~~
4 ~~limited to, the consolidation of computer systems,~~
5 ~~telecommunications, and office space.~~

6 ~~(b) Identification of those functions that are readily conducive~~
7 ~~to consolidation or centralization into the board, including, but not~~
8 ~~limited to, administrative functions, document processing,~~
9 ~~remittance cashing, public service, collection, and physical~~
10 ~~equipment and facilities.~~

11 ~~(c) Identification of administrative functions that, because of~~
12 ~~statutory conflicts or inconsistent administrative processes of the~~
13 ~~Franchise Tax Board and the State Board of Equalization, cannot~~
14 ~~be readily consolidated into the board.~~

15 ~~SEC. 8. The civil service staff of the Franchise Tax Board~~
16 ~~shall be transferred to the State Board of Equalization in~~
17 ~~accordance with the provisions of Section 19050.9 of the~~
18 ~~Government Code.~~

19 ~~SEC. 9. No contract, lease, license, or any other agreement to~~
20 ~~which the State Board of Equalization or the Franchise Tax Board~~
21 ~~is a party shall be void or voidable by reason of this act, but shall~~
22 ~~continue in full force and effect, with the State Board of~~
23 ~~Equalization assuming all of the rights, obligations, and duties of~~
24 ~~the Franchise Tax Board. That assumption by the State Board of~~
25 ~~Equalization may not in any way affect the rights of the parties to~~
26 ~~the contract, lease, license, or agreement.~~

27 ~~SEC. 10. On and after January 1, 2006, the unencumbered~~
28 ~~balance of all money available for expenditure by the Franchise~~
29 ~~Tax Board in carrying out any functions transferred to the State~~
30 ~~Board of Equalization by this act shall be made available for the~~
31 ~~support and maintenance of the State Board of Equalization. All~~
32 ~~books, documents, records, and property of the Franchise Tax~~
33 ~~Board shall be transferred to the board.~~